



DEPARTMENT OF HEALTH

CBR 10 Dealing with Freedom of Information (FOI)

Requests

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This document was released under
the Freedom of Information Act 1982
by the Department of Health

Audience

This Corporate Business Rule applies to all staff, both ongoing and non-ongoing, including employees of consultants and service providers.

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Overview

1. Purpose

This Business Rule sets out the key stages for processing a Freedom of Information (FOI) request received by the Department of Health (department) and identifies who or which area of the department has responsibility for each stage. It also provides links to the key resources for processing an FOI request.

This Business Rule incorporates the principles and key concepts of the requirement outlined in *Part D – Managing our Services, 10. Dealing with Freedom of Information (FOI) Requests* of the Secretary's Instructions.

2. Policy

Officials are required to:

- comply with the provisions of the *Freedom of Information Act 1982* (FOI Act) as a law which imposes specific obligations on Commonwealth agencies; and
- comply with internal departmental procedures, including those set out in this Business Rule.

This is to ensure that the department is able to fulfil its statutory obligations as a Commonwealth agency.

3. Explanation of certain terms

Agency is the term within the FOI Act that refers to Commonwealth entities that are subject to the provisions of the FOI Act.

Decision maker is the officer (usually SES band 1 or higher) who has been authorised by the Minister

or the Secretary under section 23 of the FOI Act to make a decision in respect of an FOI access request, and who is responsible for the relevant FOI decision.

Disclosure log form is the template completed by decision makers which provides the rationale for the publication of documents released in response to an FOI request on the disclosure log.

Disclosure log is the publication of information that has been released in response to an FOI request.

Documents (as defined in section 4(a) of the FOI Act) include:

- (a) any of, or any part of any of, the following things:
 - (i) any paper or other material on which there is writing;
 - (ii) a map, plan, drawing or photograph;
 - (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
 - (v) any article on which information has been stored or recorded, either mechanically or electronically;
 - (vi) any other record of information; or
- (b) any copy, reproduction or duplicate of such a thing; or
- (c) any part of such a copy, reproduction or duplicate;
but does not include:
 - (d) material maintained for reference purposes that is otherwise publicly available; or
 - (e) Cabinet notebooks.

Note: it is important to be aware that, unless specified in the request, documents within scope include all copies (e.g. photocopies) and all versions (e.g. drafts) whether in electronic or hardcopy form, that have been made and retained, from all areas of the department not just the area with current responsibility for the processing of the request.

FOI request is an application for access to documents that complies with the requirements of the FOI Act.

FOI Unit is the functional unit, headed by the Assistant Secretary, Legal and Assurance Division,
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Advice and Legislation Branch, with responsibility for ensuring requests are processed in accordance with the FOI Act and departmental procedures.

Internal reviewer is a decision maker authorised to conduct an internal review under section 54C of the FOI Act (usually SES band 2 or higher).

4. Introduction

The FOI Act is a Commonwealth law creating an enforceable right of access for any person who wishes to make a request for documents in the possession of an Agency, or official documents of Ministers. The FOI Act applies to virtually all Commonwealth agencies, including the department.

The FOI Act provides a general right of access to information in the possession of Agencies and Ministers, unless the documents fall within a specific category of exemption.

In certain circumstances, it may be appropriate to respond to an FOI request by providing information or documents outside the FOI Act (i.e. 'administratively'). However, where this is being considered, it should first be discussed with the FOI Unit before any documents are provided.

5. Processing a FOI Request

Timeframes

Under the FOI Act, a FOI request must be processed within 30 calendar days from the date a valid FOI request is received. However, in some circumstances, that time can be extended:

- to allow the department to consult a third party – 30 calendar days;
- with the agreement in writing of the applicant – up to 30 calendar days; and
- for complex or voluminous requests (approved by the Information Commissioner) – 30 calendar days or other appropriate period.

The 'clock stops' in two instances: when a notice of a liability to pay a charge has been issued to an applicant, and when the applicant is formally consulted on a 'practical refusal reason'.

Deemed Decisions

A 'deemed decision' occurs when a decision on access has not been made within the statutory timeframes.

If a deemed decision occurs, the FOI Unit will apply to the Information Commissioner for an extension of time, under section 15AC of the FOI Act. If the Information Commissioner agrees to the extension, the deemed decision is taken to never have happened.

Charges

There are no fees charged under the FOI Act for the following:

- making an FOI application;
- applicants seeking access to their own personal information;
- the first five (5) hours of decision-making time; and
- applications not decided within the statutory timeframe.

However, the FOI Act provides a discretion to agencies to impose or not impose a charge for providing access, or impose a charge that is lower than the applicable charge.

Applicants can be charged \$15.00 per hour for the time spent searching for or retrieving a document; and \$20.00 per hour for time spent making a decision on a request.

The processing period (including any extensions of time) is suspended from the time the department advises an applicant of an estimated charge until the time the applicant agrees in writing to pay the charge. An applicant can ask the department for a waiver or reduction of the charge, however, the period remains suspended until the department notifies the applicant of its decision as to whether

the charge will be waived or reduced.

Under the FOI Act, applicants have 30 calendar days to respond in writing to a notice of liability to pay a charge and either advise the department that they:

- (i) agree to pay the charge; or
- (ii) contend that the charge has been wrongly assessed, or should be reduced or not imposed, giving reasons for the contention; or
- (iii) withdraw the request.

If the applicant does not provide a response within 30 calendar days, the FOI request will be taken to have been withdrawn.

Roles and responsibilities of officers

The Assistant Secretary of the Legal Advice and Legislation Branch, Legal and Assurance Division, the nominated decision maker, and action officer of the Division to which a FOI request relates to, are responsible for processing a FOI request. The information below outlines the responsibilities of these officers.

(a) Assistant Secretary, Legal and Assurance Division, Advice and Legislation Branch

The Assistant Secretary, through the department's FOI Unit, is responsible for ensuring the following is undertaken:

Incoming FOI request

- Receiving FOI requests and assessing whether the requests are valid under the FOI Act.
- Assisting applicants to make valid requests as required under section 15(3) of the FOI Act.
- Determining the relevant Division(s) which will process a FOI request.
- Notifying relevant Divisions of requests.

- Initiating contact with the nominated decision maker and action officer regarding the processing of the FOI request.
- Notifying the Ministers' Offices and departmental Executive of receipt of non-personal FOI requests within three calendar days of receiving the FOI request.¹
- Notifying applicants, within 14 calendar days of receiving the FOI request, that the department has received their request.

Charges

- Providing advice to the decision maker and/or action officer regarding the imposition of charges and making charges decisions following consultation with the decision maker. The FOI decision maker may choose to make the decisions on charges if they wish.
- Within 14 calendar days, or as soon as practicable, sending a charges notice to the applicant.
- Receiving payment from applicants and informing the decision maker and/or action officer when a receipt has been issued.

Consultation

- Providing advice regarding consultation during the decision making process including:
 - assisting in identifying relevant third parties (for example individuals, organisations, or state and territory governments);
 - assisting in identifying other stakeholders to be consulted, for example the Department of the Prime Minister & Cabinet or the Department of Foreign Affairs & Trade and other Commonwealth agencies ('courtesy consultation'); and
 - timeframes for consultations with third parties and/or other stakeholders.
- Preparing relevant documents for consultation.

¹ Note: During Caretaker Period, Ministers' Offices are not notified of a decision three (3) calendar days prior to notification to the applicant. However, the department's Executive *is* notified of the decision three (3) calendar days prior to notification to applicant.

- Writing to identified third parties and/or other stakeholders seeking their views on the release of identified documents.
- Liaising (where necessary) with third parties and/or other stakeholders and providing responses to the decision maker and action officer.

Decision

- Liaising with the decision maker and/or action officer to discuss any risks in releasing documents and the exemptions available under the FOI Act.
- Reviewing documents marked for redaction, where applicable, provided by the decision maker and/or action officer.
- Drafting the notice of decision, including the statement of reasons, with input from the decision maker and/or action officer.
- Facilitating any request for legal advice by the decision maker, having regard to the risks which may arise from the release or withholding of documents under exemptions, or the decision is at significant risk of challenge.
- Preparing and providing a decision pack (including the draft notice of decision, relevant documents, FOI Decision Pack Checklist, and Disclosure Log Form) for the decision maker's review and signature.
- Meeting with the decision maker and action officer for final meeting to discuss the decision.
- Ensuring the decision maker reviews and signs the final notice of decision and the Disclosure Log Form (if applicable), and provides final cleared documents for release.
- Applying redactions to documents where applicable and preparing documents for release to the applicant.

- For non-personal FOI requests – notifying the Ministers’ Offices and department’s Executive of the decision three calendar days prior to notification to the applicant (where a decision has been made), attaching documents to be released (if any).²
- Sending the notice of decision and documents for release to the applicant and third parties (if applicable) within statutory timeframes.
- Monitoring the third party review rights timeframes and releasing any additional documents as required.

General

- Undertaking all liaison with the applicant, Office of the Australian Information Commissioner (OAIC), other Commonwealth agencies, and third parties, where necessary.
- Where applicable, forwarding requests that should be transferred to another agency, to the relevant FOI contact of the other agency and requesting they accept the transfer of the request.
- Maintaining and publishing released documents on the department’s Disclosure Log within 10 calendar days, following notice to the applicant of the decision.
- Notifying third parties of the decision, including reasons for the decision, where third parties have objected to the release of documents and a decision is made to release documents.
- If applicable, notifying the OAIC of any time extensions.
- Filing relevant documents relating to each FOI request in the department’s file management systems.

Note: Nothing in the allocation of responsibilities above is to derogate from the independence of the decision maker in making the decision. The decision maker must exercise their discretion without direction from any other person.

² Note: During Caretaker Period, Ministers’ Office is not notified of a decision three days prior to notification to applicant. However, the department’s Executive is notified three days prior to notification to applicant.

(b) Relevant Division – Decision Maker

Incoming FOI request

The decision maker is the officer nominated to decide on a FOI request which relates to their Division. The decision maker is responsible for and must ensure that, as soon as practicable, the following is undertaken:

- Nominating an action officer to assist in the processing of a request and advising the FOI Unit.
- Where necessary, consulting with the relevant First Assistant Secretary regarding any sensitivities or risks associated with the request.
- Making arrangements to ensure the following occurs:
 - Search and retrieval throughout the department for all documents relevant to the request is undertaken within the first five calendar days of the department receiving a valid FOI request.
 - Preparation of a schedule of all documents identified within the scope of the FOI request.
 - All documents within the scope of the FOI request converted to a PDF format and uploaded into the relevant TRIM placeholder created by the FOI Unit.

Charges

- Determining, in consultation with the FOI Unit, whether or not an applicant is liable to pay a charge. The department generally charges for FOI requests where charges are applicable under FOI legislation, and charges notices are issued. FOI applicants may choose, in response to a charges notice, to apply for waiver or reduction based on financial hardship or public interest, with applications considered on a case-by-case basis on their merits.

Consultation

- Ensuring any third parties or other Commonwealth agencies which require consultation are accurately identified and any response provided during the course of consultation is considered.
- Ensuring the Department of the Prime Minister & Cabinet is consulted on any Cabinet documents; and the Department of Foreign Affairs and Trade is consulted on any documents relating to international relations and foreign governments.
- Ensuring any stakeholders within the department are identified and consulted.
- Providing the relevant Deputy Secretary with a copy of the schedule of documents and access to those documents, where necessary.

Assessment of Documents

- Undertaking examination of identified documents and considering release or applicable exemptions to be applied to the documents.
- Obtaining legal advice regarding possible exemption provisions being considered; or on the application of the FOI Act, where the decision maker considers appropriate, having regard to any risks which may arise from release or withholding of documents, where there is a lack of clarity about availability of exemptions, or the decision is at significant risk of challenge.

Decision

- Making decisions about the release or exemptions of documents under the FOI Act in an independent manner, after considering any advice received from the FOI Unit.
- Not less than one week before the date to notify the applicant:
 - preparing media talking points and/or briefing if it is anticipated the decision and/or release of documents will generate media interest; and
 - notifying other Commonwealth agencies if the release of a document may result in questions being directed at those agencies.

- Where applicable, creating in the relevant TRIM placeholder:
 - one full unedited copy of every document clearly identified in the decision;
 - one marked up copy with the relevant exemptions ready for redactions; and
 - one edited copy with exempt material redacted and suitable for provision to the applicant.
- Meeting with the FOI Case Officer to review and finalise notice of decision and clear documents for release to the applicant (where applicable).
- By no later than three working days before informing the applicant of the decision, providing the FOI Unit with:
 - a signed notice of decision and accompanying statement of reasons;
 - a signed FOI Procedures Checklist and Disclosure Log Form if applicable; and
 - clearly identified documents to be withheld pending third party review rights (if applicable).³

6. Rights of Review

FOI applicants have two avenues for review of a decision on an FOI request:

- internal review by a decision maker within the department; or
- review by the Information Commissioner (IC review).

FOI applicants are not required to apply for internal review of a decision before applying for IC review. There is also no fee or charge for applying for either an internal review or an IC review.

Internal Review

FOI applicants can apply for internal review of an 'access refusal decision', while an affected third party to an FOI request may apply for internal review of an 'access grant decision'.

Applicants cannot seek internal review of an earlier internal review decision and in instances where

³ A third party who contends during the consultation process that access should be refused has the right to seek internal or IC review of any subsequent agency decision to grant access.

an access refusal decision or access grant decision was:

- made by a minister;
- made by the principal officer of an agency; or
- not made within the statutory timeframe ('deemed decision').

Upon receiving an internal review request, the FOI Unit will identify a person other than the original decision maker to make the review decision. An internal review request is processed in the same manner outlined in part 5 of this Business Rule.

Information Commissioner Review

The Information Commissioner can review the following decisions:

- access refusal decision;
- access grant decision;
- refusal to extend the period for applying for internal review under s 54B;
- an agency internal review decision under s 54C; and
- deemed decision where the statutory timeframe was not met.

The FOI Unit will liaise with the Information Commissioner, and the original decision maker, or internal review decision maker, as appropriate, regarding the IC process.

Further information about IC reviews can be found on OAIC's [website](#).

7. References

Core References

The following core references are of relevance to this Business Rule:

- [Secretary's Instructions](#)
- [Department's Intranet Site](#)

- [Guidelines issues by the Australian Information Commissioner Legislation](#)
- [Freedom of Information Act 1982 \(Cth\)](#)
- [Freedom of Information \(Charges\) Regulation 2019 \(Cth\)](#)
- [Archives Act 1983 \(Cth\)](#)
- [Australian Information Commissioner Act 2010 \(Cth\)](#)

8. Exceptions

Exceptions to this Business Rule will be handled on a case by case basis in consultation with the Assistant Secretary, Legal and Assurance Division, Advice and Legislation Branch.

9. Penalties

Officers should be aware that failure to act in accordance with the Secretary's Instructions could be a breach of the Code of Conduct. A breach of this Code may result in disciplinary action, which may include dismissal.

10. Contacts

The following is a list of contacts for information relating to this Business Rule:

- Assistant Secretary, Legal and Assurance Division, Advice and Legislation Branch
- FOI Director, Legal and Assurance Division, Advice and Legislation Branch.

11. Document Control

Document Owner

This document is owned by Assistant Secretary, Legal Advice and Legislation Branch. The Business Rule was approved by the First Assistant Secretary, Legal and Assurance Division.

Version Control

The following is a record of the history of changes to this Policy:

Version	Issued	Section	Page	Description of change
1.0	Oct 2009			First Release
1.1	Jan 2010			Transcribed to new format
2.0	November 2010			Amendments to FOI Act – 1 November 2010
2.1	January 2012			Amendments to FOI Act – 1 May 2011
3.0	July 2013			Amendment to decision maker responsibilities
4.0	January 2016			FOI function moved to MPEG. Increased administrative support provided to decision makers. Consider consultation with states and territories following feedback from Deputy Secretaries.
5.0	November 2019			FOI function moved to Legal and Assurance Division. More detail on roles, and updated links.

Where changes to the Policy are:

- significant - the version number will be incremented by 1.0; or
- minor - the version number will be increased by 0.1.

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